IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 177 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT ON BEHALF OF J H SHAH, FOOD INSPECTOR

Versus

INDIAN RAYON AND INDUSTRIES LTD. VERAVAL FIRM.

Appearance:

MR. S.P. DAVE A.P.P for Petitioner

MR MIHIR H JOSHI for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3, 4, 5, 6, 7, 8, 9,10,11

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/04/2001

ORAL JUDGEMENT

1. This is a Revision application under Section 397 of the Code of Criminal Procedure, 1973 against an order

of discharge recorded by the learned Judicial Magistrate First Class at Veraval on 29th January, 2000 from offences punishable under Section 7 (1) read with Section 16 of The Prevention of Food and Adulteration Act in Criminal Case No. 4119 of 1995 holding that there was much delay in submission of complaint and further delay was caused in despatch of the second sample, for second report and second opinion from the Central Food Laboratory. That therefore, the valuable right of the respondents herein has been lost resulting in serious miscarriage of justice.

2. Feeling aggrieved by the said judgement and order of discharge the State of Gujarat through the Food Inspector has preferred this Revision Application before this Court. It has been mainly contended here that the learned Magistrate has committed serious illegality in discharging the present respondents without properly appreciating the evidence before him. I have heard Mr. S.P. Dave, learned Additional Public Prosector for the Revisioner-petitioner and Mr. M.H. Joshi, learned Advocate appearing for the contesting respondents. The learned Additional Public Prosecutor has taken me through the judgement of the learned Magistrate. On going through the judgement, it can be gathered that the learned Magistrate has taken proper precaution before coming to the finding that the respondents deserve an order of discharge. It is a fact that the original complainant, the Food Inspector had collected a sample of curd from the respondent on 23.12.1993 and the report of the public analysts was obtained on 25.01.1994. The record does not show that a copy of the P.A. report was sent or made available to the respondents. The complaint was filed about 23 months after the collection of the sample. Thereafter, the respondent had applied for a second opinion from the Central Food Laboratory and despite the dispatch of the sample in July, 1997 there was further delay in sending the second sample to the Central Food Laboratory. In this connection the learned Magistrate has considered certain decisions showing that this sort of delay is fatal to the case of the prosecution. Mr. S.P. Dave, learned Additional Public Prosecutor appearing for the Revisioner - petitioner has not been able to dislodge the aforesaid finding of the learned Magistrate. In above view of the matter it can be said that there is no merit in the present Revision Application. The delay cannot be attributed to the respondents and because of the delay the valuable right of the respondents has been lost resulting in serious miscarriage of justice. In this Revision Application the Court can exercise its jurisdiction to do the justice,

but it cannot be used for doing injustice. In above view of the matter I find no merit in the present Revision Application. It is accordingly dismissed. Notice discharged.

(D.P. BUCH,J.)

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